

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JAN ROUVEN FUECHTENER,

Defendant.

Case No. 2:16-cr-00100-GMN-DJA

REPORT AND RECOMMENDATION

This matter is before the Court on Interested Party F.A.J.R. Magic Trust's Motion for Release of Funds (ECF No. 419), filed on October 27, 2020. Civil Plaintiffs filed a Response (ECF No. 420) on November 10, 2020. The Magic Trust filed a Reply (ECF No. 421) on November 11, 2020.

Intervenor Magic Trust seeks release of all funds currently in the registry of the Court, plus all accrued interest, to the Magic Trust. It contends that since the related civil case motion for prejudgment writ of attachment was denied and the withheld funds were determined to be property of the Magic Trust, the funds are ripe for release to it. (ECF No. 419). The Plaintiffs in the related civil case respond that they do not dispute that the Motion was denied, but preserve their remedies to recover against either Defendant or the Magic Trust. (ECF No. 420). The Magic Trust replies that the civil Plaintiffs acknowledge the basis for withholding the funds no longer exists, they do not have a judgment, and their hope for a judgment is not a basis to continue to hold the funds. (ECF No. 421).

The parties are familiar with the events of this case and the Court will only restate them here as necessary. On July 24, 2017, Judge Hoffman issued a report and recommendation that the Court hold \$975,300 pending sentencing for satisfaction of monetary penalties with the remainder returned to the trust. (ECF No. 207). On August 22, 2018, Judge Navarro adopted the report and

1 recommendation to the extent consistent with her Order. (ECF No. 290). After the sentencing,
2 Judge Navarro ordered the release of \$307,500 and \$24,648.41 in interest on March 14, 2019.
3 (ECF No. 347). However, that release was stayed on May 22, 2019 until an Order was issued on
4 the pending Motion for Prejudgment Writ of Attachment in another case, *Lily, et al. v.*
5 *Fuechtener*, Case No. 2:19-cv-352-RFB-GWF. (ECF No. 381). Recently, on February 3, 2020,
6 Judge Youchah who took over the case from Judge Foley, denied the motion for prejudgment writ
7 of attachment, found the funds held in the registry of the Court belong to the Magic Trust and no
8 objection was filed. (Case No. 2:19-cv-352-RFB-GWF, ECF No. 40).

9 As a result, the Court finds that the Magic Trust's request is meritorious. Indeed, the
10 Plaintiffs in the related civil case did not specify any basis for denying the Motion and merely
11 represent that they will still seek to recover against Defendant or the Magic Trust if they are so
12 entitled. The Court notes that sentencing is complete and Judge Youchah has resolved the basis
13 for the stay of Judge Navarro's Order leaving no further ground to hold the funds at issue.
14 Having reviewed the proposed order ECF No. 419-2, the Court finds that it should be entered.

15 **IT IS THEREFORE RECOMMENDED** that Interested Party F.A.J.R. Magic Trust's
16 Motion for Release of Funds (ECF No. 419) be granted and the proposed order ECF No. 419-2 be
17 entered.

18 This report and recommendation is submitted to the United States District Judge assigned
19 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
20 may file a written objection supported by points and authorities within fourteen days of being
21 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
22 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d
23 1153, 1157 (9th Cir. 1991).

24 DATED: November 20, 2020

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26 DANIEL J. ALBREGTS
27 UNITED STATES MAGISTRATE JUDGE
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